IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 387 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

L.M.S FOUNDRIES PVT LTD.

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 19/01/2000

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

The Income Tax Appellate Tribunal, Ahmedabad, Bench 'A'

has referred the following question for the our opinion, has referred the following question for our opinion, hereinbelow:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to investment allowance u/s.32A of the Income-tax Act, 1961 and depreciation on entire cost of the machinery without deducting therefrom the amount of subsidy received from the Government ?"

The assessee was a private limited company and in course of the assessment year 1979-80, it claimed investment allowance u/s.32A of the Income Tax Act. Upon value of the new machinery and plant purchased during the relevant year, the assessee claimed investment allowance on the gross income without deducting the amount of subsidy, which, it was entitled to receive from the Government.

The Income Tax Officer concerned, no doubt, allowed the investment allowance and depreciation after deducting 15 per cent of the cost of such machineries on account of subsidy receivable from the Government. The Commissioner of Income-tax (Appeals) upon an appeal by the assessee held that the assessee was entitled for investment allowance and depreciation on entire machinery without deducting the amount of subsidy received from the Government.

Again, on an appeal before the Tribunal by the Revenue after relying on the order of the Special Bench of the Tribunal at Madras, on an identical issue in the case of Pioneer Match Works v. ITO , upheld the order of the Commissioner of Income Tax (Appeals). That is how the aforesaid question has been referred to us for our opinion at the instance of the Revenue.

Learned counsel appearing for the Revenue, candidly, at the outset, drew our attention to a decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. P.J.Chemicals Limited, 210 ITR 230, wherein, identical question pertaining to the amount of subsidy has been decided and in that decision, the view of this Court in CIT v. Grace Papers Industries Pvt. Ltd., 183 ITR 591 came to be approved. Obviously, therefore, the question which has been referred to us is squarely covered by the aforesaid decision.

In the result, our answer to the aforesaid question is in the affirmative, against the revenue and in favour of the

assessee. The reference stands disposed of accordingly without any order as to costs.

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(vjn)